Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

PATRICK SERVANTES,

PETITIONER

v.

THE PEOPLE ex rel. LOUISE H. RENNE,
as City Attorney, etc.,

RESPONDENTS

On Petition For Writ of Certiorari
To The California Supreme Court

PETITION FOR WRIT OF CERTIORARI

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EDITOR'S NOTE

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TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW 1

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE PETITION. 3

CONCLUSION 14

TABLE OF AUTHORITIES

CASES

Ace Auto Body & Towing, Ltd. v. City of New York (2nd Cir. 1999) 171 F.3d 765, cert. denied (1999) 528 U.S. 868 10,16

Alicia T. v. County of Los Angeles (1990) 222 Cal.App.3d 869 9

Babbit v. Sweet Home Chapter of Communities for a Great Oregon (1995) 515 U.S. 687 16

Berry v. Hannigan (1992) 7 Cal.App.4th 587 14

Cedar Bluff 24-Hour Towing v. City of Knoxville (E.D.Tenn. 1999) 78 F.Supp.2d 725 9

Debtor Reorganizers, Inc. v. State Bd. of Equalization.(1976) 58 Cal.App.3d 691 9

Harris County Wrecker Owners v. City of Houston (S.D.Tex. 1996) 943 F.Supp. 711 10

Hott v. City of San Jose (N.D.Cal. 2000)92 F.Supp. 2d 996.....10

Northway Towing, Inc. v. City of Pasadena (S.D.Tex. 2000) 94 F.Supp.2d 801 ..... 10, 15

People ex rel v. Patrick Servantes, 86 Cal.App.4th 1084 3,5,7,12,13

Petrey v. City of Toledo (6th Cir. 2001) 246 F.3d 548 8

Pilot Life Insurance Co. v. Dedeaux (1987) 481 U.S. 41 15

R. Mayer of Atlanta, Inc. v. City of Atlanta (11th Cir. 1998) 158 F.3d 538 ..... 5,7, 8,12,13,14

Roskind v. Morgan Stanley Dean Witter & Co.(2000) 80 Cal.App.4th 345, 355 9

Rusello v. United States (1983) 464 U.S. 16 11

Tocher v. City of Santa Ana (9th Cir. 2000) 219 F.3d 1040, cert. denied (2001) 69 U.S.L.W. 3552 10,11,12,13,14

Tully v. World Savings & Loan Assn. (1997) 56 Cal.App.4th 654 9

Walters v. Metropolitan Educational Enterprises (1997) 519 U.S. 202 16

Wisconsin Public Intervenor v. Mortier (1991) 501 U.S. 597 12

RULES

Rules of Supreme Court 10(b) 4

STATUTES

7 U.S.C. § 136v(a) 12

28 U.S.C. §1257(a) 2

49 U.S.C. § 13102(12) 8

49 U.S.C. § 13102(18) 8

49 U.S.C. §14501(c)(1) 10,11,12

49 U.S.C. §14501(c)(1)(A) 15

49 U.S.C. §14501(c)(2)(A) 10,11,12, 14,15,16

4501(c)(2)(C) 11,12

usiness and Professions Code § 17200 2

an Francisco Police Code § 3000 6

an Francisco Police Code § 3057 6

an Francisco Police Code § 3060 6

an Francisco Traffic Code §§ 172.03, 172.05, 172.08 . 6

ehicle Code § 21100(g) 6

ehicle Code § 21100 12

ehicle Code §§ 22650 5

ehicle Code § 22651.1 5

ehicle Code §22658 ..... 7,13, 14, 15,17

ehicle Code §§ 22650–22711 5

ehicle Code §§ 29003, 29004, 29005, 29006, 29007 .. 16

QUESTIONS PRESENTED FOR REVIEW

1. Whether the highest state court can allow to stand a state court of appeals decision, determining an important federal question, that conflicts with a decision in that federal circuit when the result would create a race to the court house for justice. In California, as the law currently stands, if the tow company gets to federal court first state and local laws are preempted and not enforced. If the state or local government gets to state court first the state and local laws are not preempted and are enforced.

2. State safety regulations of motor carriers are expressly exempt from federal preemption under the Federal Aviation Administration Authorization Act of 1994, 49 U.S.C. 14501, et al. May a State delegate its exemption to a local authority?

3. Some States and local municipalities of some have tow-truck laws regarding licensing of the operators, method of payment that the tow companies must receive, and written authorization by properties owners to tow vehicles left on private property. Are these laws generally "safety" regulations that are exempt from federal preemption under the Act?

OPINIONS BELOW

The opinion of the State of California Court Appeal, First Appellate District, Division Five Appellate Court is reported at 86 Cal.App 4th 1081. A copy of the opinion is attached as Exhibit A. The petition to review before and Supreme Court of California was denied and filed under S095954. A copy of the opinion is attached as Exhibit B.

JURISDICTION

The judgment of the court of appeals for the State of California was filed on February 1, 2001. The denial of the petition for review before the California Supreme Court was filed on May 16, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

49 U.S.C. § 14501(c)(1) expressly preempts state or local regulation "related to a price, route, or service of any motor carrier . . . with respect to the transportation of property.

STATEMENT OF THE CASE

On September 18, 1998 the City Attorney of the City of San Francisco brought suit against Petitioner alleging a claim for unfair business

practices pursuant to the California Business & Professions Code, § 17200 et seq., seeking a permanent injunction, civil penalties, and disgorgement of profits. Prior to trial the city attorney obtained a preliminary injunction ordering Petitioner to refrain from any conduct that was in violation of the State of local towing regulations. *People ex rel v. Patrick Servantes,*[1] This matter proceeded to trial on August 17, 1999 relying on the defense that the Federal Aviation Administration Authorization Act of 1994 (FAAA Act), had preempted the state and local laws that the City of San Francisco was trying to enforce Petitioner to his detriment did not put on much evidence to refute the alleged violations, except for the allegation that he was over charging. Petitioner was successful regarding this issue showing that his charges were in fact compliant with the law. Thus, judgment was entered against Petitioner and in favor of Respondents on November 17, 1999. The trial court found that Servantes had committed hundreds of violations of state and local laws (adding and compounding multiple violations for each tow) and ordered him to pay a civil penalty of $74,700, representing $100 for each of the 747 tows Petitioner made over a three year period, and further ordered him to refund profits of $52,500 as

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[1]*People ex rel v. Patrick Servantes, 86 Cal.App.4th 1081, 1084*

restitution to the victims. The court also found that Petitioner had violated the preliminary injunction 174 times for multiple violations for each tow made after the preliminary injunction was in place, for which the court assessed an additional penalty of $87,000, calculated at $500 for each violation. The court permanently enjoined petitioner from ever towing vehicles from private property within the State of California and imposed additional restrictions on all consensual towing performed by Petitioner. This judgment exceeded Petitioner's gross annual receipts and essentially put him out of business.

Petitioner filed a timely appeal, asserting three arguments, one with two subparts: (1) federal law, 49 U.S.C. § 14501(c)(1), preempts the laws on which the trial court relied; (2) the judgment and fines (a) violate due process and (b) are not supported by substantial evidence; and (3) the injunction is void. February 1, 2001 petitioner's appeal to the California Court of Appeal was denied and the judgment against him was affirmed.

Petitioner petitioned the California State Supreme Court for review and review was denied on May 16, 2001.

REASONS FOR GRANTING THE PETITION

1. The California Supreme Court has sanctioned a Court of Appeals decision involving an important federal question in a way that conflicts with the decision of a

United States court of appeals, therefore it calls for an exercise of this Court's supervisory power. Rules of Supreme Court 10(b). The California Court of appeals relied heavily on the facts, which were against Petitioner, rather than the law. In the opening paragraph of their opinion the court quotes a Georgia Supreme Court case, which has is not binding on the California court's but they found persuasive. *Servantes at 1081* However, the court of appeals court did not find the pertinent Ninth Circuit decision interpreting the very federal law in question persuasive at all. *Servantes, supra*

2. The Act preempts the California Vehicle Code's and the City of San Francisco's Police Code's regulation of tow trucks. The regulatory scheme and the general rule of preemption:

Vehicle Code §§ 22650 through 22711 govern towing parked and abandoned vehicles without the owners' consent. Section 22651.1 requires among other things, that a tow operator accept cash or a bank card in payment. Section 22658 governs removal of vehicles from private property. Subdivision (h) prohibits the tow operator from charging more than one-half of its normal rates when the vehicle owner returns before the vehicle is towed. Subdivision (i) limits what an operator may charge. Subdivision (k) requires the operator to accept cash or a credit card. Subdivision (l)(1) requires written authorization from the property possessor or its agent before a tow and requires that that person be present at the time of the tow. Subdivision (l)(2) allows, under

certain circumstances, tows of vehicles in front of fire hydrants without the property owner's specific authorization.

The California Legislature has also granted local authorities permission to license and regulate the operations of tow-truck operators that have their principal place of business within the municipality.[2] Under that authority, San Francisco has adopted regulations of tow trucks in its Police and Traffic Codes. Tow companies and drivers must obtain a permit before removing vehicles from private property.[3] Within thirty minutes after removing a vehicle from private property, tow companies must notify the police tow desk, provide the driver's name and permit number, and identify the vehicle.[4] They must maintain records of each towed vehicle and retain those records for three years.[5] Companies removing vehicles from private property must prominently display a copy of their schedule of fees, must not charge excess fees, and must accept credit cards, cash, or checks for release of towed vehicles.[6]

Under the Act, meanwhile, except as otherwise

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[2]Veh. Code § 21100, subdiv. (g).

[3]San Francisco Police Code § 3000.

[4]*Id.*,§ 3057.

[5]*Id.*, § 3060.

[6]San Francisco Traffic Code §§ 172.03, 172.05, 172.08.

provided,

> a State, political subdivision of a State, or political authority of two or more states may not enact or enforce a law, regulation or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . or any motor private carrier . . . with respect to the transportation of property.[7]

There is little question but that a tow truck is a motor carrier under the Act.[8] Courts have also repeatedly held that 49 U.S.C. § 14501(c)(1) applies to provisions analogous to § 22658 and to the Police Code.[9]

2. Congress enacted the Federal Aviation Administration Authorization Act of 1994 (FAAA Act), which expressly preempts state or local regulation "related to a price, route, or service of any motor carrier . . . with respect to the transportation of property." (49 U.S.C. fn. 7 § 14501(c)(1). A towing company qualifies as a "motor carrier," which is broadly defined as "a person providing motor vehicle transportation for

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[7]49 U.S.C. § 14501(c)(1).

[8]Slip op. at 7 citing 49 U.S.C. §§ 13102(12), 14501(c)(2)(C) (exemption from preemption regulations of the price of nonconsensual tows).

[9]Slip op. at 8, citing *Tocher*, *supra*, 219 F.3d at 1047; *Mayer*, *supra*, 158 F.3d at 545.

compensation." (§ 13102(12). Congress's intent to include towing companies within the preemption clause is revealed in section 14501(c)(2)(C), which provides a limited exception to allow state and local regulation of the price of non-consensual towing services.

This case presents the interesting issue of whether a state court can decide an important federal question in a way that conflicts with a decision of a United States Court of appeals. In this case the California Supreme Court, by denying Petitioner's petition for review, has decided that the preemption clause in the (FAAA Act) does not apply in California state court, in direct opposition a Ninth Circuit decision, *Tocher v. City of Santa Ana.*[10] and several other federal cases dealing with this same preemption issue. In the 11th Circuit the Federal Court of Appeals held in , *R. Mayer of Atlanta, Inc. v. City of Atlanta,*[11] that a licensing scheme similar to the one in this case was preempted by the federal statute. In the 6th Circuit the Federal Court of Appeals held in *Petrey, v. City of Toledo* [12], various Toledo towing ordinances must be struck down under the preemption doctrine because they conflict with a

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[10]*Tocher v. City of Santa Ana* (9th Cir. 2000) 219 F.3d 1040, 1049-1052, cert. denied (2001) 69 U.S.L.W. 3552.

[11]*R. Mayer of Atlanta, Inc. v. City of Atlanta* (11th Cir. 1998) 158 F.3d 538.

[12]*Petrey v, City of Toledo* (6th Cir. 2001) 246 F.3d 548;.

federal statute. In the Eastern District of Tennessee the United States District Court held similarly in *Cedar Bluff 24-Hour Towing v. City of Knoxville*,[13] Citing prior decisions of *Roskind v. Morgan Stanley Dean Witter & Co.* [14] Stating that " In the absence of a controlling United States Supreme Court decision on a federal question, we are free to make an independent determination of law,"; *Tully v. World Savings & Loan Assn.* [15] and further holding that an opinion from the Ninth Circuit is no more significant than one from another circuit. *Alicia T. v. County of Los Angeles* [16] (1990) 222 Cal.App.3d 869, 879; *Debtor Reorganizers, Inc. v. State Bd. of Equalization* [17] (1976) 58 Cal.App.3d 691, 696.) as a basis for not following *Toucher* the of the Court it held that "Although we are obligated to follow the decisions of the United States Supreme Court, we are not bound by the decisions of the lower federal courts. "[T]he prevailing view appears to be that the ... 'decisions of the lower federal courts on federal questions are merely persuasive .... Where lower federal court

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[13]*Cedar Bluff 24-Hour Towing v. City of Knoxville* (E.D.Tenn. 1999) 78 F.Supp.2d 725, 728.

[14]*Roskind v. Morgan Stanley Dean Witter & Co.* (2000) 80 Cal.App.4th 345, 355..

[15]*Tully v. World Savings & Loan Assn.* (1997) 56 Cal.App.4th 654, 663.

[16]*Alicia T. v. County of Los Angeles* (1990) 222 Cal.App.3d 869, 879.

[17]*Debtor Reorganizers, Inc. v. State Bd. of Equalization.*(1976) 58 Cal.App.3d 691, 696.

precedents are divided or lacking, state courts must necessarily make an independent determination of federal law.' " (9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 780, p. 751.) The California Court of Appeals followed those courts that have held that municipal safety regulations are not preempted. The cases that the court followed include *Ace Auto Body & Towing, Ltd. v. City of New York,*[18] *Northway Towing, Inc. v. City of Pasadena,*[19] *Hott v. City of San Jose,*[20] and *Harris County Wrecker Owners v. City of Houston.*[21]

By following these cases and not the precedent in the Ninth Circuit the court has created an inexorable conflict between the state law interpreting the federal statute and the federal law within its jurisdiction.

3. **The FAAA Act preempts all local regulations.**

49 U.S.C. §14501, subdivision (c)(2)(A), specifically exempts certain enactments under a state's regulatory authority, saying nothing about the authority of a

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[18]*Ace Auto Body & Towing, Ltd. v. City of New York* (2nd Cir. 1999) 171 F.3d 765, 774-776, cert. denied (1999) 528 U.S. 868.

[19]*Northway Towing, Inc. v. City of Pasadena* (S.D.Tex. 2000) 94 F.Supp.2d 801, 802.

[20]*Hott v. City of San Jose* (N.D.Cal. 2000) 92 F.Supp.2d 996, 999-1000.

[21]*Harris County Wrecker Owners v. City of Houston* (S.D.Tex. 1996) 943 F.Supp. 711, 727.

municipality or other political subdivision.[22] The Act defines "State" as one of the fifty states of the United States and the District of Columbia.[23] Under a plain reading of this provision, a "state" does not include one of its political subdivisions.[24]

The basic rules of statutory construction confirm that Congress did not intend to save local regulation from preemption.[25] Section 14501 refers seven times to a "State or political subdivision of a State."[26] Most importantly, subdivision (c)(1) itself preempts any law of a state or a political subdivision regulating motor carriers of property. Subdivision (c)(2)(C) saves from preemption laws and regulations of a State or political subdivision relating to the price of non-consensual towing. Only subdivision (c)(2)(A) refers to states without referring to their subdivisions.[27] When Congress includes particular language in one section of a statute but omits it in another section of the same act, it is generally presumed that it acts intentionally and

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[22]*Mayer*, *supra*, 158 F.3d at 545.

[23]49 U.S.C. § 13102(18).

[24]*Tocher*, *supra*, 219 F.3d at 1050; see *Mayer*, *supra*, 158 F.3d at 545.

[25]*Ibid.*

[26]*Mayer*, *supra*, 158 F.3d at 545.

[27]*Mayer*, *supra*, 158 F.3d at 545.

purposely in the disparate inclusion or exclusion.[28] Thus the exclusion of municipal laws from subdivision (c)(2)(A) after they were expressly preempted in subdivision (c)(1) and expressly saved in subdivision (c)(2)(C) strongly implies that Congress did not intend to allow municipalities to escape preemption by enacting safety ordinances.[29]

Courts have upheld municipal regulations on two grounds. First, they have held that under California Vehicle Code § 21100 or similar statutes, states have delegated their authority to enact tow-truck regulations to municipalities.[30] Relying on *Wisconsin Public Intervenor v. Mortier,*[31] they have held that the state may delegate its authority exempt from preemption to a municipality.[32] But *Mortier* interpreted a different statutory scheme that neither expressly nor implicitly generally preempted state and local laws.[33] Instead, it contained a general non-preemption clause for state regulations.[34] The court was not faced with a

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[28]*Rusello v. United States* (1983) 464 U.S. 16, 23.

[29]*Tocher, supra*, 219 F.3d at 1051.

[30]Slip op. at 15; *Ace, supra*, 171 F.3d at 776.

[31]*Wisconsin Public Intervenor v. Mortier* (1991) 501 U.S. 597, 607-609.

[32]Slip. op. at 15; *Ace*, 171 F.3d at 775.

[33]*Mortier*, 501 U.S. at 606-607.

[34]7 U.S.C. § 136v(a).

preemption clause and a savings clause that expressly applied to states and municipalities and another savings clause that expressly applied only to states.

Courts upholding municipal safety regulations have also found them consistent with the Act's purposes.[35] Congress found that

> "*State economic regulation* of motor carrier operations causes significant inefficiencies, increased costs, reduction of competition, inhibition of innovation and technology and curtails the expansion of markets. . . . The sheer diversity of these regulatory schemes is a huge problem for national and regional carriers attempting to conduct a standard way of doing business."[36]

But allowing both states and municipalities to escape preemption under the guise of regulating safety could lead to widespread, diverse regulation of motor carriers, which is precisely what Congress sought to avoid.[37]

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[35]See slip op. at 14; *Ace*, *supra*, 171 F.3d at 776.

[36]Slip op. at 14, quoting H.R. Conf. Rep. No. 103-677, 2d Sess. (1994) (court's emphasis).

[37]*Tocher*, *supra*, 219 F.3d at 1051, citing *Mayer*, *supra*, 158 F.3d at 546.

4. **California Vehicle Code § 22658 and the San Francisco ordinances are not safety regulations which are exempt from preemption.**

Section 22658 is primarily concerned with consumer protection, not with safety.[38] The San Francisco towing ordinances similarly promote the vehicle owner's economic interest, not any great interest in safety. When the police have notice of all vehicles towed, they can determine—and tell distraught drivers—whether their vehicles have been stolen or towed by a private party. Displaying a copy of fees, prohibiting charges of excess fees, and requiring acceptance of credit cards and checks allow vehicle owners to minimize their storage charges before recovering their cars.

The court of appeals found both § 22658 and the San Francisco ordinances to be safety regulations.[39] They protect vehicle owners and the public at large from towing mistakes and outright theft.[40] Requiring the acceptance of credit cards expedites recovery of the involuntarily towed vehicle.[41] The court reiterated that legislation that limits involuntary towing and expedites vehicle recovery "clearly promotes the safety and

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[38] *Tocher*, *supra*, 219 F.3d at 1052.

[39] Slip op. at 10-11.

[40] *Id.* at 10.

[41] *Ibid.*

welfare of the public."[42] A person whose car is towed may be stranded hundreds of miles from home with neither alternative means of travel nor a place to stay.[43] And retrieving a towed car generally requires going to storage yards in the rougher parts of town.[44]

The court of appeals' determination that the provisions at issue constitute safety regulations presents two problems. First, to the extent that consumer-protection statutes deter violence between a consumer and an overreaching business, or protect against dangers resulting from the sudden need to expend money, they are *all* safety statutes.[45] But to be exempt as a *safety regulation*, the state law must be specifically directed at safety rather than just have an impact on it.[46] The statutes here only incidentally promote safety while promoting other state interests that Congress has determined to be illegitimate.

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[42]*Id.* at 11, citing *Berry v. Hannigan* (1992) 7 Cal.App.4th 587, 591.

[43]*Ibid.*

[44]*Ibid.*

[45]See *Northway Towing v. Pasadena*, *supra*, 94 F.Supp.2d at 803-804 (safety justification inadequate to justify permit requirements).

[46]See *Pilot Life Insurance Co. v. Dedeaux* (1987) 481 U.S. 41, 49 (an insurance regulation exempt from preemption under ERISA must be specifically directed at the insurance industry).

The second problem with the court of appeals' analysis is that subdivision (c)(1)(A) does not exempt all safety regulations, but only those "with respect to motor vehicles." Section § 14501 concerns motor carriers in general, so including within the safety-regulation exemption all laws promoting safety in the course of the motor carrier industry would render the qualification "with respect to motor vehicles" surplusage. But statutes must be interpreted to give each word some effect, if at all possible.[47] Thus the statute exempts from preemption only those laws that promote safe maintenance and operation of motor vehicles. It would not preempt, for example, Vehicle Code §§ 29003, 29004, 29005, 29006, and 29007, regarding towing equipment and methods.[48]

This interpretation of subdivision (c)(2)(A)'s exemption for safety regulations comports with its other exemptions. Under the canon of *noscitur a sociis*, a word gathers meaning from the words around it.[49] The other exemptions demonstrate a Congressional intent to allow a state to protect its citizens on its highways. A state may thus impose highway route controls or limitations based on the size or weight of the motor

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[47]*Walters v. Metropolitan Educational Enterprises* (1997) 519 U.S. 202, 209.

[48]See *Ace*, 171 F.3d at 774 (regulations discouraging trucks from racing each other to tows are safety measures under the Act).

[49]*Babbit v. Sweet Home Chapter of Communities for a Great Oregon* (1995) 515 U.S. 687, 702.

vehicle or the hazardous nature of the cargo. The exemption for financial-responsibility laws allows the state to ensure that motorists are fully compensated when its efforts to promote highway safety prove inadequate.

CONCLUSION

By incorrectly holding that the Act does not preempt California Vehicle Code § 22658 and the San Francisco ordinances, the court of appeals has created a conflict with the Ninth Circuit Court of Appeal. Congress intended that only state laws, not local regulations, be exempt from preemption. It further intended that only motor-vehicle safety regulations—not any law that incidentally promotes safety in the towing industry—be exempt. This court should therefore grant certiorari to resolve this conflict between the federal courts and determine whether these regulations are at issue here are preempted.

Dated: August 14, 2001

Respectfully submitted,

Patrick Servantes
Petitioner

No. A089493.

First Dist., Div. Five.

Feb. 1, 2001.]

THE PEOPLE ex rel. LOUISE H. RENNE, as City Attorney, etc., Plaintiff and Respondent, v. PATRICK SERVANTES, Defendant and Appellant.

[Opinion certified for partial publication. fn. 1]
(Superior Court of San Francisco County, No. 997979, Paul H. Alvarado, Judge.)

(Opinion by Richman, J. fn. * , with Jones, P.J., and Stevens, J., concurring.) ***{Page 86 Cal.App.4th 1083}***

COUNSEL

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OPINION

RICHMAN, J. fn. * -

Presiding Justice Harold G. Clarke of the Georgia Supreme Court observed that "[t]he law gives the towing company a great advantage over the owner of the towed car, and creates a great potential for unfair business practices and abuse of the

public." (*Porter v. City of Atlanta* (1989) 384 S.E.2d 631, 634.) While that observation was made 11 years ago and some 3,000 miles away, Justice Clarke was talking about Patrick Servantes (Servantes), who over a period of years committed myriad unfair business practices and abused the public, towing hundreds of cars off private property in abject disregard of applicable California law and San Francisco regulations. Such practices included towing vehicles without a permit, towing vehicles from private property without authorization from the property owners, refusing to accept credit cards as payment for towing and storage charges to allow release of the vehicle, and imposing excessive towing and storage charges.

The City Attorney of San Francisco brought suit to curtail Servantes's practices, alleging a claim for unfair business practices (Bus. & Prof. Code, § 17200 et seq.) and seeking a permanent injunction, civil penalties, and disgorgment of profits. Prior to trial the city attorney obtained a preliminary injunction ordering Servantes to refrain from such conduct.
{Page 86 Cal.App.4th 1084}

Following a six-day trial at which the city attorney presented 24 witnesses, the trial court found that Servantes had committed hundreds of violations of state and local laws and ordered him to pay a civil penalty of $74,700, representing $100 for each of the 747 illegal tows, and further ordered him to disgorge his illegal profits of $52,500 as restitution to the victims. The court also found that Servantes had violated the preliminary injunction 174 times, for which the court assessed an additional penalty of $87,000, calculated at $500 for each violation. Finally, the court permanently enjoined Servantes from towing vehicles from private property within the State of California and imposed restrictions on consensual towing by Servantes.

Servantes appeals, asserting three arguments, one with two subparts: (1) federal law preempts the laws on which the trial court relied; (2) the judgment and fines (a) violate due process and (b) are not supported by substantial evidence; and (3) the injunction is void. We conclude that none of Servantes's claims has merit, and we affirm the judgment.

I. THE REGULATORY SCHEME

We begin our analysis with the pertinent regulatory scheme, starting with Vehicle Code section 22658, by which the California Legislature has undertaken to regulate the removal of vehicles from private property by a towing service. fn. 2 That section provides, among other things, that the property owner must first notify the police (subd. (a)) and that the towing company must have written authorization from the property owner or agent, who must be present at the time of the tow (subd. (*l*)). Section 22658 also provides that the towing company may not impose excessive charges for towing and storage (subd. (i)), and requires that the owner of the storage facility to which the vehicle is towed accept a bank credit card or cash for the towing and storage charges (subd. (k)). fn. 3

The Legislature has also delegated to local authorities the power to regulate the licensing and operation of towing services and tow truck drivers. ***{Page 86 Cal.App.4th 1085}*** (Veh. Code, § 21100, subd. (g).) fn. 4 Pursuant to that authority, the City and County of San Francisco (City) has enacted ordinances which require towing companies and tow truck drivers to obtain a permit before removing vehicles from private property. (S.F. Police Code, § 3000.) The permit scheme requires an application to the Chief of Police, payment of an application fee, and an investigation and hearing. (S.F. Police Code, §§ 3002-3004.) The ordinance requires the

towing companies to notify the police tow desk within 30 minutes of every vehicle removed from private property, providing the tow truck driver's name and permit number and identification of the vehicle. (S.F. Police Code, § 3057.) The ordinance further requires the towing companies to maintain records of each towed vehicle and to retain those records for three years. (S.F. Police Code, § 3060.) Another City ordinance requires towing companies removing vehicles from private property to prominently display a copy of their schedule of fees, prohibits charging excess fees, and requires acceptance of credit cards, cash, or checks for release of towed vehicles. fn. 5 (S.F. Traffic Code, §§ 172.03, 172.05, 172.08.)

II. SERVANTES'S CONDUCT

Servantes first became involved in towing in 1991 or 1992 and opened his own company, Bayshore Towing (Bayshore), in 1993. On September 14, 1993, Servantes was issued a tow operator permit from the City. Within months, specifically in June 1994, that permit was revoked based on findings that Servantes had illegally removed vehicles from public streets and then reported them as private property tows, illegally demanded payment in cash, and charged excessive amounts to release the vehicles.

In April 1995 Servantes applied for a new permit as a tow operator and owner of Bayshore, but his application was denied based on his prior misconduct. However, Bayshore was subsequently issued a permit when Servantes reported that a new general manager, Allen Lawson, had taken over the company. Later, in 1996, Lawson notified the police permit division that he was no longer associated with Bayshore, and he surrendered his towing permit.

After that development, Servantes and other Bayshore drivers

were stopped several times by the police and cited for towing vehicles without a ***{Page 86 Cal.App.4th 1086}*** permit and for driving without a valid driver's license. Servantes applied for a new permit, and in July 1998 the application was denied on the ground that Servantes had continued to operate his towing business despite his lack of a permit by using false identification. The hearing officer further found that Servantes had refused to accept credit card payments, overcharged for towing and storage, and towed vehicles onto public streets before towing them to his storage facility.

In the meantime, police investigations were undertaken of Servantes and his towing operations based on numerous citizen complaints, which investigation eventually led to the police determination that Servantes was conducting an unlicensed towing operation. fn. 6 As part of the investigation, the police conducted a stakeout operation by placing a car in a private parking lot from which Bayshore had been towing vehicles. Within 15 minutes, when no attendant was at the lot, Servantes picked up the car and towed it to his storage lot.

At trial, the logs from the City's police tow desk dated from January 1, 1996, to June 30, 1999, were introduced and showed that Servantes was continuing to tow vehicles from private property despite the revocation of his permit. During that time Bayshore had conducted 747 tows, 523 of which were reported as having been conducted by Ernesto DeAlba, Martin Sexton, or Allen Lawson, at times when these drivers were not working for Bayshore. As to this, the trial court found that Servantes himself had conducted the tows and had falsely given another driver's name.

During discovery Servantes was asked to produce his business records including the written authorizations for

towed vehicles, but he produced almost nothing. The trial court found that the few authorizations that were produced were inadequate in that they were missing vital information, such as the date of the tow, the vehicle license number, or the identity of the Bayshore driver who did the tow. Three police investigators testified at trial that in the course of their investigations they could find no evidence that written authorizations had been given for Bayshore's tows, illustrated, for example, by the fact that the space on the towing receipt form for the signature of the property owner was always left blank.

In addition, there was direct evidence of noncompliance with the law. One parking lot owner testified that he had contracted with Servantes to have Bayshore remove vehicles from his lot, but that many of the tows were unauthorized. Another parking lot owner reported to the police investigators *{Page 86 Cal.App.4th 1087}* that she left the towing decisions to Servantes. Three vehicle owners who had returned to the parking lots just as their cars were being hooked up to the Bayshore tow truck testified that no agent of the lot owner was present at the time. Two vehicle owners testified that they contacted the lot owner after their cars were towed, and the lot owner's agent was surprised the car had been towed.

The trial court further found that in all 747 cases Servantes had insisted on cash payment from the vehicle owners, refusing to accept credit cards or personal checks. Luis Jacques, a driver for Bayshore, gave testimony that Bayshore accepted only cash. None of the towing receipts produced by Servantes indicated payment by credit card. During the police investigation, questionnaires were sent to all owners of vehicles towed by Bayshore, and all who responded reported that Bayshore accepted only cash. Although Servantes testified he did accept credit cards, he also testified that he kept no receipts of credit card transactions. Servantes's credit

card account statements showed virtually no activity from 1996 to 1999, and the little activity reflected was for an average charge in an amount less than the charge for a private property tow. Eleven victims testified at trial that they were told by Bayshore representatives that they had to pay in cash in order to retrieve their vehicles.

III. FEDERAL PREEMPTION

[1] An unlawful business practice within the meaning of California's Unfair Competition Act (Bus. & Prof. Code, § 17200 et seq.) is one that is forbidden by law, whether civil or criminal, federal, state, or municipal, statutory, regulatory, or court-made. (*Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal.App.4th 499, 531-532; *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838-839.) A defense to the underlying offense is a defense under California's Unfair Competition Act. (*People v. Duz-Mor Diagnostic Laboratory, Inc.* (1998) 68 Cal.App.4th 654, 673.)

[2a] Here, Servantes did not dispute that he operated without a towing permit. His principal defense at trial was that the state and local regulations governing towing operations are preempted by federal law and were thus unenforceable. The trial court rejected the argument, and Servantes reiterates his argument on appeal. We review the issue de novo as an issue of law. (*Southern Cal. Gas Co. v. Occupational Safety & Health Appeals Bd.* (1997) 58 Cal.App.4th 200, 204.) **{Page 86 Cal.App.4th 1088}**

Congress enacted the Federal Aviation Administration Authorization Act of 1994 (FAAA Act), which expressly preempts state or local regulation "related to a price, route, or service of any motor carrier . . . with respect to the transportation of property." (49 U.S.C. fn. 7 § 14501(c)(1).)

This preemption of state and local regulation had two apparent purposes: first, to provide across-the-board deregulation and eliminate nonuniform state regulations of motor carriers that were interfering with interstate commerce; and second, to eliminate the advantage that had been enjoyed by air carriers, such as Federal Express, over the more heavily regulated ground-based shipping competitors. (*Californians for Safe Dump Truck Transp. v. Mendonca* (9th Cir. 1998) 152 F.3d 1184, 1187.)

There seems little question that a towing company qualifies as a "motor carrier," which is broadly defined as "a person providing motor vehicle transportation for compensation." (§ 13102(12).) Indeed, Congress's intent to include towing companies within the preemption clause is revealed in section 14501(c)(2)(C), which provides a limited exception to allow state and local regulation of the price of nonconsensual towing services. fn. 8 There would have been no need for Congress to include this exception if Congress had not intended to preempt state and local regulation of towing services generally. (*R. Mayer of Atlanta, Inc. v. City of Atlanta* (11th Cir. 1998) 158 F.3d 538, 543 (*Mayer*); see also *Ace Auto Body & Towing, Ltd. v. City of New York* (2nd Cir. 1999) 171 F.3d 765, 771 (*Ace*); *Hott v. City of San Jose* (N.D.Cal. 2000) 92 F.Supp.2d 996; *Harris Cty. Wrecker Owners v. City of Houston* (S.D.Tex. 1996) 943 F.Supp. 711, 720-724.)

Under the FAAA Act, a state or local regulation is preempted if it is "related to" the price, route, or service of a motor carrier. The United States Supreme Court has interpreted analogous language in the Airline Deregulation Act (§ 41713(b)) to mean that a state or local law is preempted if it has "a connection with, or reference to" airline rates, routes, or services, but not if the effect is " 'too tenuous, remote, or

peripheral . . . .' [Citation.]" (*Morales v. Trans World Airlines, Inc.* (1992) 504 U.S. 374, 384, 390; see *Ace Auto Body & Towing, Ltd. v. City of New York, supra*, 171 F.3d at p. 773; *Californians for Safe Dump Truck Transp. v. Mendonca, supra*, 152 F.3d **{Page 86 Cal.App.4th 1089}** at pp. 1188-1189.) Two federal appellate courts have considered this language in the context of towing services and have reached parallel conclusions: the general rule of preemption does apply to the towing laws in issue. fn. 9

The first case is *R. Mayer of Atlanta, Inc. v. City of Atlanta, supra*, 158 F.3d 538, where the Eleventh Circuit Court of Appeals held that Atlanta's licensing scheme for towing companies was related to the service of a towing company and was thereby preempted "because the ordinances limit who is permitted to provide the services and require that individuals and companies satisfy various criteria before they provide the services." (*Id.* at p. 545; see also *Harris Cty. Wrecker Owners v. City of Houston, supra*, 943 F.Supp. at p. 725.) The second case is *Tocher v. City of Santa Ana* (9th Cir. 2000) 219 F.3d 1040 (*Tocher*), in which the Ninth Circuit recently concluded that Santa Ana's permit scheme had a direct effect on the towing market, as "the permit scheme erects barriers to entry and these barriers can affect competition for towing services in the City. [Citation.] The more applicants that are denied permits, the greater the effect on both the industry and its customers." (*Id.* at p. 1047.) Furthermore, the *Tocher* court held that the California Vehicle Code sections regulating the removal of vehicles from private property are related to a price, route, or service of a motor carrier in that the statutory provisions regulate how a company provides towing services. (*Tocher v. City of Santa Ana, supra*, at p. 1047.) We are persuaded by those authorities that Vehicle Code section 22658 and the San Francisco ordinances related to towing operations are

sufficiently connected to the service of a towing company that those laws fall within the general rule of preemption. But that does not end the inquiry.

The FAAA Act makes an explicit exception from the general rule of preemption for laws enacted pursuant to "the safety regulatory authority of a State with respect to motor vehicles . . ." (§ 14501(c)(2)(A).) fn. 10 In *Tocher*, the court concluded that some sections of the California Vehicle Code at issue there escaped preemption under this "safety regulation" exception: "[Vehicle Code section] 22650 prohibits a police officer (or other unauthorized person) from removing any unattended vehicle [from a highway] without strict compliance with the Vehicle Code. [Vehicle Code section] 22658.1 requires a towing company to notify a property owner if it was necessary to cut, remove, or damage a fence in order to remove a vehicle. Each of these provisions is designed to make the towing and removal of vehicles safer by **{Page 86 Cal.App.4th 1090}** insuring that only professionals tow vehicles and that the removal does not endanger the general public or the owner of the property where the vehicle was removed." (*Tocher v. City of Santa Ana, supra,* 219 F.3d at p. 1051.) However, as to other sections of the Vehicle Code in issue in *Tocher*, which included Vehicle Code section 22658, subdivisions (k) and (*l*), pertaining to acceptance of credit cards and written authorization by the property owner, the court concluded, without discussion, that those provisions were "based on consumer protection rather than safety, and the safety exception is therefore inapplicable." (*Tocher v. City of Santa Ana,* 49 U.S.C. §14501(c)(1) *supra*, at pp. 1044, 1052.) We conclude otherwise.

[3] Preliminarily we note, as we recently confirmed, that we

are not bound by a federal circuit court opinion. (*Roskind v. Morgan Stanley Dean Witter & Co.* (2000) 80 Cal.App.4th 345, 355.) In the absence of a controlling United States Supreme Court decision on a federal question, we are free to make an independent determination of law. (*Tully v. World Savings & Loan Assn.* (1997) 56 Cal.App.4th 654, 663.) An opinion from the Ninth Circuit is no more significant than one from another circuit. (*Alicia T. v. County of Los Angeles* (1990) 222 Cal.App.3d 869, 879; *Debtor Reorganizers, Inc. v. State Bd. of Equalization* (1976) 58 Cal.App.3d 691, 696.) [2b] In the present case, we decline to follow the *Tocher* court with respect to Vehicle Code section 22658.

As noted, Vehicle Code section 22658 requires the owner of private property to notify the police before causing a vehicle to be towed and requires the towing company to obtain the written authorization of the property owner (subds. (a) & (*l*)); it also requires that the storage facility accept a credit card for payment of the towing and storage charges (subd. (k)). In our view, this statute offers far more than economic protection to the consumer. By ensuring that removal occurs only upon proper authorization, the statute obviously serves to protect vehicle owners and the public at large from both towing mistakes and outright theft of vehicles from private property. And by the requirement that the tow operator accept credit cards, the statute expedites recovery of the involuntarily towed vehicle. Thus, we disagree with *Tocher* that Vehicle Code section 22658 is merely a consumer protection statute, for several reasons.

As noted, *Tocher* reached its holding without analysis or discussion. Moreover, it reached its conclusion without mention, let alone discussion, of *Berry v. Hannigan* (1992) 7 Cal.App.4th 587, 591, which specifically stated that subdivision (k) of Vehicle Code section 22658 " 'directly

affects the safety and welfare of vehicle owners and operators.' " In *Berry* Division One of this court addressed the issue of the constitutionality **{Page 86 Cal.App.4th 1091}** of the law requiring tow operators to accept credit cards and, on the way to finding it constitutional, noted as follows: " 'It cannot be doubted that the unexpected loss of the use of one's vehicle directly affects the safety and welfare of vehicle operators and owners. A person may be stranded hundreds of miles from home with no alternative mode of return travel and with no place to stay until the vehicle can be recovered. . . . Legislation which tends to assist members of the public from involuntarily losing the use of their vehicles and which tends to expedite recovery of their vehicles once they have been removed fairly and clearly promotes the safety and welfare of the public.' " (*Berry v. Hannigan, supra*, at p. 591, quoting *Crane Towing, Inc. v. Gorton* (1977) 89 Wn.2d 161 [570 P.2d 428, 434].)

Finally, the conclusion in *Tocher* ignores the realities of the situation, realities well demonstrated here. To begin with, it is commonly understood that storage facilities for towed cars are unlikely to be located in densely populated, highly lighted locations, but rather in areas that might be described as desolate, especially at night when so much of the retrieval of towed cars takes place. Indeed, that was the evidence at bar: Bayshore was located in an industrial warehouse area of San Francisco.

The effect of this was demonstrated in vivid detail by the testimony of William Griffith, who described his plight-and his concern for his safety-that ensued upon his return to a private parking lot one Saturday evening to find his car missing and no one in the parking lot. Griffith called the number on the sign, but was told that there was no record of his car being towed. After believing for a while that his car had been stolen,

Griffith called again and was told that his car had been towed and to call Bayshore. He did and was advised to go to the Bayshore storage lot. He did that, traveling by taxi cab, after spending 45 minutes trying to hail one. Griffith took the taxi to the "tow yard" and, concerned about its location, asked the taxi driver to wait with him while he retrieved his car. Griffith went to the gate, and the person there said he could not let him in and that he had to wait. After some 20 minutes, Griffith "ran out of money" to continue to pay the taxi driver, so he asked the driver take him to a McDonald's, where he used a pay telephone to again call Bayshore. Griffith asked "where they were," and the person responded they were "on their way." Griffith had the taxi driver return him to the tow yard, where he was let off to wait alone, as he had no more money to pay the driver. Griffith waited for another 45 minutes to an hour until Servantes finally arrived. Griffith got out his credit card, to be expressly told that his credit card "won't be accepted and [that] only $140 cash would be accepted." Servantes then drove Griffith to an ATM (automated teller ***{Page 86 Cal.App.4th 1092}*** machine) where, as he put it, he was "just fortunate that [he] had enough money in the bank to cover it." Griffith withdrew the money, and they returned to the tow yard where he recovered his car.

In sum and in short, we find a public safety purpose in the protections Vehicle Code section 22658 offers to the owner of a vehicle.

That brings us to a discussion of the San Francisco regulations and whether the safety regulation exception applies to them. With respect to municipal ordinances, as distinct from state statutes, the existing case law is divided. On the one hand, the Eleventh Circuit held that the safety regulation exception did not apply to Atlanta's municipal ordinances because the exception authorizes only a "State" to

enact safety regulations, not a municipality or other political subdivision of a state. (*R. Mayer of Atlanta, Inc. v. City of Atlanta, supra*, 158 F.3d at pp. 545-548.) The court pointed out that section 14501(c)(2)(A) is the only subsection of the FAAA Act that mentions the authority of a state without also mentioning the state's political subdivisions. Further, the court reasoned that the preemption of municipal ordinances is consistent with Congress's deregulatory purpose: "By withholding the authority to enact safety and insurance regulations from political subdivisions, Congress ensured that counties and municipalities would not enact differing (and perhaps inconsistent) sets of safety and insurance ordinances. Stated differently, it is reasonable to assume that Congress decided that safety and insurance ordinances must be enacted on a statewide level, in order to minimize the disturbances to the motor transportation industry that a patchwork of local ordinances inevitably would create." (*R. Mayer of Atlanta, Inc. v. City of Atlanta, supra*, at pp. 545-546.)

A contrary result was reached by the Second Circuit in *Ace Auto Body & Towing, Ltd. v. City of New York, supra*, 171 F.3d at pp. 775-776, which declined to follow *Mayer*. The *Ace* court first concluded that the omission within the safety regulation exception of any mention of political subdivisions did not prevent a state from delegating its regulatory authority to a municipality. Further, the court reasoned that Congress's intent was to eliminate local economic regulation, not local safety regulation. Consequently, the *Ace* court held that New York City's requirements regarding licensing, recordkeeping, and other operations of towing businesses were directly related to safety concerns, with only an incidental economic burden, and thereby fell within the exception of section 14501(c)(2)(A). (See also *Hott v. City of San Jose, supra*, 92 F.Supp.2d 996; *Harris Cty. Wrecker Owners v. City of Houston, supra*, 943 F.Supp. at pp. 725-732.)

Most recently, the Ninth Circuit followed *Mayer* and held that the Santa Ana ordinances governing the operations of towing businesses were preempted and did not fall within the safety regulation exception, because that **{Page 86 Cal.App.4th 1093}** exception "only exempts safety regulations promulgated by state governments, not those enacted by municipalities." (*Tocher v. City of Santa Ana, supra*, 219 F.3d at p. 1050.) Interpreting the language of the FAAA Act in light of its purpose, the court held that Congress deliberately omitted *municipal* safety regulations from the exception. "Allowing both states and municipalities to escape preemption under the guise of regulating safety could lead to widespread, diverse regulation of motor carriers, precisely what Congress sought to avoid in promulgating a broad preemption statute." (*Id.* at p. 1051.) Further, the court held that for preemption purposes a state may not delegate its regulatory authority to a municipality; otherwise, "Congress would always be required to preempt both state and local laws, or preempt neither. That result would violate fundamental principles of federalism and lead to a distorted interpretation of the Supremacy Clause." (*Ibid.*)

We find the Second Circuit's opinion in *Ace* more persuasive and follow its reasoning here. When, as here, a federal statute expressly preempts state or local law, the determination of the scope of the preemption must " 'start with the assumption that the historic police powers of the States [are] not to be superseded . . . unless that was the clear and manifest purpose of Congress.' [Citations.]" (*Medtronic, Inc. v. Lohr* (1996) 518 U.S. 470, 485; see also *Southern Cal. Gas Co. v. Occupational Safety & Health Appeals Bd., supra*, 58 Cal.App.4th at p. 204.) Because safety regulations fall within the traditional police powers of the states, and because Congress has expressly excepted safety regulations from the

preemption clause, we cannot curtail the ability of local municipalities to respond to local safety concerns without a clear expression that such was the intent of Congress. (*Southern Cal. Gas Co. v. Occupational Safety & Health Appeals Bd., supra*, at p. 205.)

At best, the legislative history shows that Congress's deregulatory purpose was focused on disparate *economic* regulation: "[P]reemption legislation is in the public interest as well as necessary to facilitate interstate commerce. *State economic regulation* of motor carrier operations causes significant inefficiencies, increased costs, reduction of competition, inhibition of innovation and technology and curtails the expansion of markets. . . . The sheer diversity of these regulatory schemes is a huge problem for national and regional carriers attempting to conduct a standard way of doing business." (H.R. Conf. Rep. No. 103-677, 2d. Sess. (1994), reprinted in 1994 U.S. Code Cong. & Admin. News, pp. 1715, 1758-1759, italics added.) In fact, the House Conference Report indicated that "State authority to regulate safety, **{Page 86 Cal.App.4th 1094}** financial fitness and insurance . . . of motor carriers is unchanged, since State regulation in those areas is not a price, route or service and thus is unaffected." (*Id.* at p. 1757.) We find in the legislative history no expression of a congressional desire to preempt local control over safety issues.

Moreover, we take issue with the Ninth Circuit's conclusion in *Tocher* that under section 14501(c)(2)(A) a state's authority to delegate safety regulations to municipalities must be ignored. The Ninth Circuit reasoned: "If this Court were to hold that a state can always delegate its responsibility to municipalities, Congress would always be required to preempt both state and local laws, or preempt neither. That result would violate fundamental principles of federalism and lead to

a distorted interpretation of the Supremacy Clause." (*Tocher v. City of Santa Ana, supra*, 219 F.3d at p. 1051.)

In our view, the *Tocher* concern is overstated. In the FAAA Act Congress did expressly preempt, as a general rule, any law or regulation by a state or political subdivision of a state. (§ 14501(c)(1).) However, Congress made an express exception for the state's safety regulatory authority. Had Congress intended not to except municipal safety regulations, Congress could have said so. We can discern no violation of principles of federalism in a construction of section 14501(c)(2)(A) that allows a state to delegate its authority to a municipality. (See *Wisconsin Public Intervenor v. Mortier* (1991) 501 U.S. 597, 607-609, 611-612 [act permitting "States" to regulate pesticides authorized states to allow local regulation of pesticides].)

In summary, we conclude that when, as here, the state has delegated authority to local authorities (Veh. Code, § 21100, subd. (g)), the municipal regulations on safety issues fall within the exception of the FAAA Act (§ 14501(c)(2)(A)) and are not preempted.

We further conclude that in the present case, as in *Ace*, the San Francisco ordinances establishing licensing, reporting, recordkeeping, and other requirements for towing businesses are directly related to safety concerns and fall within the safety regulation exception. The permit scheme of the San Francisco Police Code serves to ensure that only qualified persons undertake nonconsensual tows. The permit application process allows the police to check the background of permit applicants and to reject unsuitable persons, e.g., those with a history of vehicle offenses. (S.F. Police Code, § 3004.) Moreover, tow truck drivers must submit a letter of hire from a licensed towing company, thereby ensuring that

the company will be accountable for the driver. (S.F. Police Code, § 3003, subd. (d).) **{Page 86 Cal.App.4th 1095}**

As we explained in connection with Vehicle Code section 22658, the reporting and record keeping requirements of the San Francisco ordinances help ensure that vehicles will be towed only for proper purposes. And the San Francisco Police Code's requirement of prompt notice to the police tow desk further serves to avoid burdening the police with mistaken reports of stolen vehicles. (S.F. Police Code, §§ 3057, 3060.)

In any event, even if we were to conclude otherwise and find the San Francisco ordinances preempted by the FAAA Act, we would have no hesitation in affirming the trial court's judgment here. The trial court principally based its judgment upon Servantes's violations of state law, specifically Vehicle Code section 22658. Although the court additionally found that Servantes had violated the permit requirements of the San Francisco Police Code, the court imposed no additional penalties on account of these particular violations.

[4] Furthermore, California's Unfair Competition Act prohibits not only unlawful business practices but also unfair business practices. (Bus. & Prof. Code, § 17200 et seq.) The statute is intentionally broad to give the court maximum discretion to control whatever new schemes may be contrived, even though they are not yet forbidden by law. (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180-181; *Podolsky v. First Healthcare Corp.* (1996) 50 Cal.App.4th 632, 647.) Servantes is simply incorrect in his assertion that California's Unfair Competition Act prohibits only conduct that is unfair to competitors. (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 109-113.) One test for determining an

"unfair" practice is that the gravity of the harm to the victim outweighs the utility of the defendant's conduct. (*State Farm Fire & Casualty Co. v. Superior Court* (1996) 45 Cal.App.4th 1093, 1103-1104; *Podolsky v. First Healthcare Corp., supra*, at p. 647; *People v. Duz-Mor Diagnostic Laboratory, Inc., supra*, 68 Cal.App.4th at p. 662; but see *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co., supra*, at pp. 184-185 [test held too vague for injuries to competitors].) [2c] Here, the injuries inflicted upon the unwitting victims were substantial, while the conduct of Servantes was entirely unethical and unscrupulous with no redeeming value. (See *People v. James* (1981) 122 Cal.App.3d 25, 35-36.)

We find no error in the trial court's conclusion that the conduct of Servantes constituted unlawful business practices in violation of Business and Professions Code section 17200 et seq. ***{Page 86 Cal.App.4th 1096}***

IV.-VI. fn. *

VII. DISPOSITION

The judgment is affirmed.

Jones, P.J., and Stevens, J., concurred.

FN 1. Pursuant to California Rules of Court, rules 976(b) and 976.1, parts IV, V and VI of this opinion are not certified for publication.

FN *. Judge of the Alameda Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of

the California Constitution.

–FN *. Judge of the Alameda Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

FN 2. The Legislature has also enacted a statutory scheme regulating the removal of vehicles from streets and highways by police officers. (Veh. Code, § 22650 et seq.) The issues before us in this appeal, however, are confined to towing from private property.

FN 3. Vehicle Code section 22658 provides a private right of action for the owner of the towed vehicle. A private property owner who causes the removal of a vehicle without complying with statutory requirements is liable to the vehicle owner for double the towing and storage charges (subd. (e)). A towing service which removes a vehicle without written authorization is liable to the vehicle owner for four times the towing and storage charges (subd. (*l*)(3)). Similarly, anyone who charges excess towing or storage fees is liable to the vehicle owner for four times the amount charged (subd. (j)). And any operator of a storage facility who fails to accept a credit card is liable to the vehicle owner for four times the towing and storage charges not to exceed $500 (subd. (k)).

FN 4. Likewise, the Legislature has delegated to local authorities the power to establish procedures and set costs for the release of vehicles removed by police officers. (Veh. Code, § 22850.5.)

FN 5. Fees for towing of vehicles from public streets are

set by agreement between the City and a contracting towing company. (See S.F. Traffic Code, § 172.04.) Fees for removing vehicles from private property may not exceed those contractual rates. (Veh. Code, § 22658, subd. (i); S.F. Traffic Code, § 172.04.)

FN 6. Pursuant to a search warrant, the police seized some miscellaneous papers found in a vehicle on Bayshore's storage lot. The police also seized three of Servantes's five tow trucks.

FN 7. All further undesignated section references are to title 49 of the United States Code.

FN 8. Section 14501(c)(2)(C), provides that the preemption clause of section 14501(c)(1) "does not apply to the authority of a State or a political subdivision of a State to enact or enforce a law, regulation, or other provision relating to the price of for-hire motor vehicle transportation by a tow truck, if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle."

FN 9. In a third case, the Second Circuit Court of Appeals did not reach the question as the parties agreed that section 14501(c)(1) generally preempted the New York licensing laws for towing companies. (*Ace Auto Body & Towing, Ltd. v. City of New York, supra,* 171 F.3d at p. 771.)

FN 10. Section 14501(c)(2)(A), provides that the preemption clause of section 14501(c)(1) "shall not restrict the safety regulatory authority of a State with

respect to motor vehicles, . . . or the authority of a State to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization."

Court of Appeal, First Appellate District,
Division Five- No A089493
S095954

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE EX REL. LOUISE RENNE,
AS CITY ATTORNEY, ETC.,
Plaintiff and Respondent,

v.

PATRICK SERVANTES,
Defendant and Appellant

Petition for review DENIED.

SUPREME COURT
FILED
MAY 16, 2001
Frederick K. Ohlrich Clerk

Deputy

S/George
Chief Justice

IN THE

Supreme Court of the United States

PATRICK SERVANTES,

Petitioner

v.

THE PEOPLE ex rel. LOUISE H. RENNE,

as City Attorney, etc.,

Respondents

CERTIFICATE OF SERVICE

I, David W. Washington, declare under penalty of perjury that the following facts are true and correct.

I am citizen of the United States, over the age of 18 years, and not a party to, or interested in the within titled action. My business address is 1741 Verna Test Court, Stockton, California, 95206

On August 14, 2001, I served three copies of the within **PETITION FOR CERTIORARI** on all interested parties in said cause by delivering a true copy as follows:

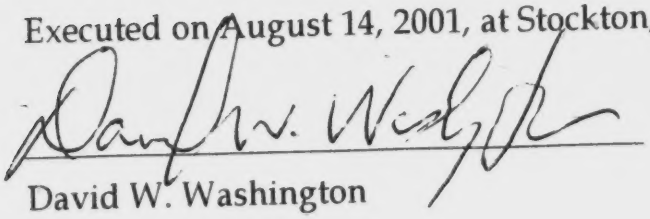
[X] **(By Mail)** Said document will be deposited for collection and mailing in the ordinary course of business on the date specified below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon full prepaid for first class mail in the United States in the City of Stockton,

County of San Joaquin, State of California.

Each envelope was addressed as follows:

LOUISE H. RENNE
City Attorney for the City of San Francisco
ROSE-ELLEN HEINZ
Deputy City Attorney
Fox Plaza
1390 Market Street, Suite 401
San Francisco, CA 94102-5408

Executed on August 14, 2001, at Stockton, California



David W. Washington